

## Supporting measures to sustain liquidity for Italian SMEs affected by Covid-19 – State Guarantees under the European Union rules.

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### Introduction

The Decree-Law “CuraItalia”, no. 18 March 17, 2020, published in the Official Gazette of March 17, 2020, no. 70<sup>1</sup>, introduced measures to support the liquidity of companies damaged by the epidemiological emergency caused by the spread of COVID19 in Italy.

In particular, reference is made to the following measures such as extraordinary moratorium on loans and credit facilities granted by banks and financial intermediaries to SMEs, and new interventions of the Guarantee Fund for SMEs.

### §

#### Measures of financial support in favor of SMEs affected by the Covid-19 outbreak (art. 56, paragraph 2, DCI).

In accordance to Article 56, Decree-Law “CuraItalia” (hereinafter, for brevity “DCI” or the “Decree”), the Covid-19 epidemic is formally recognized as an exceptional occurrence and as a severe disturbance to the economy within the meaning of Article 107 of the Treaty on the Functioning of the European Union.

In order to support the entrepreneurial activities damaged by the Covid-19 outbreak, SMEs may avail themselves, through due communication, of the following financial support measures concerning debt exposures towards:

- i. Banks;
- ii. Financial intermediaries *ex* Article 106, Legislative Decree no. 385, September 1, 1993 (Consolidated Banking Act<sup>2</sup>); and
- iii. Other entities authorized to grant credit in Italy:

Article 56, paragraph 2, DCI, prescribes the following measures:

- a) for credit facilities subject to revocation and **loans** granted according to advance payment on outstanding credits as of February 29, 2020, or, if greater, as of the date of publication of the Decree (March 17, 2020), the granted amounts, both for the part used and for the part not yet used, **cannot be revoked in whole or in part until September 30, 2020**;
- b) for non- installment loans with contractual maturity set before September 30, 2020, the **contracts shall be extended**, together with the respective ancillary elements and without any formality, **until September 30, 2020**, on the same terms;
- c) for **loans and other financings repayable in installments**, the payment of the installments or the lease payments coming due before September 30, 2020, shall be **suspended until September 30, 2020**. The repayment schedule for the installments or lease payments to be suspended is thus deferred, together with the related ancillary elements and, without any formality, ensuring that there are no new or increased charges for both parties. Companies are entitled to request the suspension of capital repayments only.

<sup>1</sup> Decree-Law “CuraItalia”, no. 18 March 17, 2020, published in the Official Gazette of March 17, 2020, no. 70, *see full text at* <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>.

<sup>2</sup> Legislative Decree no. 385, September 1, 1993, *see full text at* <https://www.bancaditalia.it/compiti/vigilanza/intermediari/Testo-Unico-Bancario.pdf>

### Access procedure (*art. 56, paragraph 3, DCI*)

The communication that must be sent by the borrowers in order to benefit of these financial supporting measures shall be accompanied by the **declaration** through which the company **self-certifies** under art. 47 of Presidential Decree 445/2000<sup>3</sup>, that it has suffered **temporary liquidity shortages as a direct consequence of the Covid-19 outbreak**.

### Beneficiaries (borrowers) (*art. 56, paragraphs 4 and 5, DCI*)

Borrowers whose debt exposure is not, as of the date of the publication of the Decree (March 17, 2020), classified as impaired according to the rules applicable to credit intermediaries, may benefit from the measures above referred.

For the purposes of Article 56, DCI, the interested companies are SMEs as defined by the European Commission with Recommendation n. 2003/361/EC of May 6 2003<sup>4</sup>, established in Italy.

### Subsidised and third-party financing (*art. 56, paragraphs 6, DCI*)

With regard to subsidised and third-party financing, the transactions referred to in Article 56, paragraph 2, letter *a)*, *b)* and *c)*, DCI, are carried out **without prior authorization and with an automatic extension of the funding contract** concerning the extension of the loan operation, under the same conditions as the original contract; as well as regarding subsidized loans, subject to prior notification to the incentive entity, which may provide any additions to the operating procedures within 15 days.

### Subsidiary State Guarantee (*art. 56, paragraphs 6-12, DCI*)

Upon **telematic request of the lending subject**, indicating the maximum amount guaranteed, the operations subject to the support measures above referred, are admitted, without assessment, to the guarantee of the SMEs Guarantee Fund<sup>5</sup>.

The SMEs Guarantee Fund, with an **endowment of 1.730 million Euros**, guarantees:

- i.* for an amount equal to 33 % of the loans above described at letter *a)*, the primary uses, as at September 30, 2020, compared to the amount used as at the date of publication of the Decree (March 17, 2020);
- ii.* for an amount equal to 33 % of the loans and other financings whose maturity is extended under Article 56, paragraph 2, letter *b)*, DCI;
- iii.* for an amount equal to 33 %, the individual installments of mortgages and other financings repayable in installments or lease installments which are due by September 30, 2020, and which have been suspended under paragraph 2, letter *c)*, DCI.

The **guarantee** of the Special Fund Section has a subsidiary in nature, and shall be **granted free of charge**.

The guarantee shall cover contractually agreed payments **regarding interests and principal** on the increased use of credit facilities and loans, suspended installments or lease payments and other extended financings.

<sup>3</sup> Presidential Decree n. 445, December 28, 2000, *see full text at* <https://www.camera.it/parlam/leggi/deleghe/00443dla.htm>.

<sup>4</sup> European Commission, Recommendation n. 2003/361/EC, May 6 2003, *see full text at* <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:EN:PDF>

<sup>5</sup> Established under Article 2, paragraph 100, letter *a)* of Law n. 662, December 23 1996, *see full text at* <https://www.gazzettaufficiale.it/eli/id/1996/12/28/096G0686/sg>.

An amount of not less than 6 % of the guaranteed amount from the special section's endowment, shall be set aside to cover the risk for each transaction eligible for the guarantee.

Intermediaries may request **enforcement of the guarantee** whether enforcement procedures have been initiated, **within 18 months following the end of the support measures**, in relation to:

- i. total or partial default on the exposures referred to Article 56, paragraph 2, letter *a*), DCI;
- ii. non-payment, even partial, of principal and interest due on loans extended under Article 56, paragraph 2, letter *b*), DCI;
- iii. default on one or more installments of loans or lease payments suspended under Article 56, paragraph 2, letter *c*), DCI.

In this case, the intermediaries may send to the SME Guarantee Fund a request of enforcement of the guarantee referred to Article 56, paragraph 2, letter *a*), *b*) and *c*), DCI, together with an **estimate of the final loss to be borne by the Fund**.

For the case referred to Article 56, paragraph 2, letter *c*), DCI, the guarantee may be activated, under the same conditions as above, up to the amount of the installments or lease payments suspended until September 30, 2020. The Guarantee Fund, having verified the legitimacy of the request, shall update the relevant provisions.

The Guarantee Fund, having verified the legitimacy of the request, proceeds to **liquidate in favor of the bank**, within 90 days, **an advance** equal to **50%** of the lower amount between the maximum amount guaranteed by the Special Section and 33% of the estimated final loss borne by the Fund.

The creditor beneficiary of the guarantee may request, within 180 days of the exhaustion of enforcement procedures, the liquidation of the remaining amount due by way of enforcement of the Fund guarantee. The Guarantee Fund shall pay the amount due to the beneficiary subjects covered by the guarantee, within 30 days of the date of receipt of the demand for enforcement.

The thus prescribed guarantee shall operate following the **authorization of the European Commission** provided for in Article 107 of the Treaty on the Functioning of the European Union<sup>6</sup>.

*The material in this publication was created as of the date set forth above and is based on laws, court decisions, administrative rulings and congressional materials that existed at that time, and should not be construed as legal advice or legal opinions on specific facts. The information in this publication is not intended to create, and the transmission and receipt of it does not constitute, a lawyer-client relationship.*

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<sup>6</sup> Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, see full text at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.